



JON ERPENBACH

STATE SENATOR

Testimony on Senate Bill 264

October 17, 2007

Thank you for considering my testimony today on Senate Bill 264. This is an important piece of legislation intended to make a simple, but very important fix to our mandatory reporting statutes.

Senate Bill 264 restores what was always viewed as the purpose behind the mandatory report of child abuse exception to patient-therapist privilege: to allow mandatory reporters to report suspected cases of child abuse without undermining the child-therapist relationship. This exception to privilege in the case of mandatory reports was significantly widened in the 2005 Wisconsin Supreme Court case, *Denis L.R.*

Senate Bill 264 simply gives abused children the same privilege protections as everyone else. Currently, child victims are the only set of patients who are no longer guaranteed privilege for their communications with mental health professionals. This makes no sense, as child victims require a safe environment to share intimate and embarrassing information relating to abuse.

This bill will make the scope of the mandatory reporting privilege exception consistent with other statutory privilege exceptions, such as the exception to privilege in guardianship proceedings.

Mental health professionals regarded the original intent of the mandatory reporting exception to privilege to only extend to the information contained in their mandatory report—not any and all personal information the patient has shared that related to the abuse.

I believe that this bill strikes an appropriate balance between protecting child victims through the mandatory reporting system and providing victims with confidential and therapeutic treatment so that they can heal.

Child victims of sexual assault should be able to trust that their therapist will only reveal information that is necessary to protect them and identify their abusers. When this trust is broken survivors are re-victimized.

It is also very important to note that criminal defendants will still be able gain access to privileged information if it is reasonably necessary for their defense under other well established legal exceptions. This bill only ensures that child victims' loss of confidentiality is not automatic.

This proposal has the endorsement of the Wisconsin Coalition Against Sexual Assault, the Wisconsin Coalition Against Domestic Violence, Disability Rights Wisconsin, and the Wisconsin Council on Children and Families.

Thank you again for allowing me the opportunity to testify before you today.



PAT STRACHOTA

STATE REPRESENTATIVE

Senate Committee on Health and Human Services

Senate Bill 264

Representative Pat Strachota

I would like to thank Senator Erpenbach for co-authoring this bill with me and thank him and the committee for holding a hearing on it today.

SB 264 is a very simple bill. It provides abused children with the same confidentiality privileges as any other person who seeks help from a mental health professional.

Legislative action is needed because of a 2005 Wisconsin Supreme Court decision that essentially abolishes the ability of therapists to engage in effective therapy with many child victims of abuse. The decision says that abused children are no longer guaranteed privilege for their communications with mental health professionals.

This was clearly not the intent when the Wisconsin laws regarding privilege and mandatory reporting of child abuse were drafted. Mental health professionals regarded the original intent of the mandatory reporting exception to privilege to only extend to the information contained in their mandatory report—not any and all personal information the patient has shared that related to the abuse.

When a child is abused, this is precisely the time when therapy is most needed. Child victims require a safe environment to share intimate and embarrassing information relating to abuse. The privilege statute is designed to afford confidentiality in those situations when it is most important. The current law removes those protections precisely when they are needed the most. This makes no sense.

SB 264 limits the scope of the mandatory reporting privilege exception and makes the statutes consistent with other statutory privilege exceptions, such as the exception to privilege in guardianship proceedings

Today you will hear testimony from professionals who can further explain the great need for this bill and can answer any of your technical questions.

I urge the committee to support this bill and provide abused children with confidential and therapeutic treatment so that they can heal.



October 17, 2007

To: Wisconsin Senate Committee on Health and Human Services
From: The Task Force on Family Violence of Milwaukee, Inc.
Re: 2007 Senate Bill 264

Dear Members of the Committee on Health and Human Services:

Established in 1975, the Task Force on Family Violence of Milwaukee, Inc. (TFFV) is a private, non-profit organization that was originally organized to provide services to battered women. Our programs have expanded as our society began to understand the far-reaching impact of family violence in our community. This recognition led to expanded programming for adult victims and the perpetrators of family violence and the establishment of our Children's Advocacy Program in the year 2000. The Children's Advocacy Program supports the TFFV mission to address all the aspects and effects of domestic violence in our city and create systems which place at-risk children at the center of our concern.

TFFV Child Victim Advocates provide specialized case management, referral and legal assistance services to protective parents whose children have been victims of physical or sexual abuse. The goal of this program is to protect children from further maltreatment and to advocate within the systems working with children affected by violence. In this work we see first-hand the devastating effects of sexual abuse on children and families in our community.

An important part of the work in the TFFV Children's Advocacy Program includes linking child victims to mental heal and supportive services. Every year we work closely with dozens of therapists in Milwaukee to provide children access to the expertise and support that they so desperately need to heal.

The TFFV strongly supports the passage of Senate Bill 264. Under the current interpretation of Wis. Stat. 905.04 (4), the delicate relationship between child and therapist may be subject to public view. This could have a harmful impact on victimized children and their families and serve as discouragement for others from seeking these important services in the future.

Children who are survivors of sexual assault need and deserve the entirety of their therapeutic relationship shielded from the public view. The statutory language of Senate Bill 264 balances the need for mandated reporting of child abuse while preserving the critical therapeutic relationship. We encourage you to advance Senate Bill 264 so that victimized children can have continued access to the services they need to heal and help them grow into healthy and productive lives.

Sincerely,

Carmen Pitre
Executive Director

Cyrus A. Behrooz, J.D.
Director of Advocacy and Children's Services

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Wisconsin Coalition Against Sexual Assault, Inc.

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To: Senate Committee on the Health and Human Services
From: Mike Murray, Policy Specialist, Wisconsin Coalition Against Sexual Assault, Inc.
Date: October 17, 2007
Re: Wisconsin Coalition Against Sexual Assault Testimony in Favor of SB 264

My name is Mike Murray and I am the policy specialist for the Wisconsin Coalition Against Sexual Assault, Inc. [WCASA]. I am here to testify in favor of Senate Bill 264, which protects the ability of child victims of abuse to engage in effective counseling with their therapists. WCASA would like to thank Chairman Erpenbach and Rep. Strachota for sponsoring this important piece of legislation. This bill restores the legislative intent behind protecting child-therapist confidentiality, while still ensuring that mandatory reports of child abuse can be made to the appropriate authorities.

A 2005 Wisconsin Supreme Court case, Denis LR, held that when a professional listed under the 905.04 privilege statute makes a mandatory report of child abuse or neglect, any information shared between the patient and the therapist regarding the abuse is no longer privileged.¹ This holding was based on the court's interpretation of the statutory language that creates an exception to the patient-therapist privilege. The precise wording of the exception is:

There is no privilege in situations where the examination of an abused or neglected child creates a reasonable ground for an opinion of the . . . family therapist or professional counselor that the abuse or neglect was other than accidentally caused or inflicted by another. Wis. Stat. sec. 905.04(4)(e)(2).

Unfortunately, the Supreme Court interpreted the exception literally to hold that once a therapist (or any other mandatory reporter) has reason to make a mandated report, she can be compelled to testify about any information disclosed during the course of therapy regarding the alleged abuse. This interpretation of the privilege statute could have a devastating affect on the patient-treatment provider relationship.

The Supreme Court's reading of the statute drastically enlarges its scope beyond what was intended and is necessary. Mental health professionals had always believed the exception existed for the sole purpose of allowing the therapist to share *only* the information contained in their mandated report. Until Denis LR, this is how this statute worked out in practice. This interpretation and practice was consistent with other statutory privilege exceptions, such as the exception in section 905.04(4)(am) that allows the court to access

¹ 283 Wis.2d 358, 699 N.W.2d 154, 2005 WI 110

privileged information in a guardianship proceeding. This statute is narrowly tailored so that the exception to the doctor-patient privilege is limited to only "information contained in a statement concerning the mental condition of the patient furnished to the court by a physician or psychologist." Thus the relevant information is available to the court without compromising the therapist-patient relationship. In parallel with the guardianship report exception, SB 264 will restore an appropriate balance between Wisconsin's interest in having child abuse reported and investigated and the need to protect privileged mental health communications.

A child should be able to seek therapy for abuse without fear that everything he or she discusses with the therapist could be revealed to others. When a child is abused, this is precisely the time when therapy is most needed. In order to heal, child survivors of sexual assault need to develop a support system in which they can explore and discuss embarrassing and intimate feelings and experiences.² For many survivors, one of the most crucial steps towards recovery is regaining the ability to trust in others. Without a guarantee of confidentiality, most child victims will never be able to build the trust necessary with their therapist to engage in effective therapy. The privilege statute is designed to afford confidentiality in those situations. The Denis L.R. decision removed those protections for child victims precisely when they are needed the most.

SB 264 strikes the appropriate balance between confidentiality provisions in the privilege law and mandatory child abuse reporting without completely destroying the therapeutic relationship. This both allows social services and law enforcement to get involved to protect the child, but also allows that child to continue to receive services from the therapist without fears about public disclosure of intimate, embarrassing, and extremely personal information

On behalf of WCASA and its members across the state, I urge you to support this legislation to restore the legislature's intention that children be provided a safe environment to access supportive services without the risk of further victimization.

² For example, it is not uncommon for boys question their sexuality after being sexually assaulted by a man. If the boy described such struggles with this issue and wants to work on that issue in therapy, that struggle should not be revealed in a public courtroom.

Senate Public Hearing
Committee on Health and Human Services

10/17/07

Senate Bill 264

Submitted by: Kristin Hoffschmidt, MSSW
Member, National Association of Social Workers – WI Chapter

I urge you to support SB 264, which introduces a simple change in the statutory language of WI Stats 904.04, concerning the privilege of confidential communication between clients and professionals. The change proposed in SB 264 states that there is no privilege **for information contained in a report of child abuse or neglect.**

Currently, WI Stats 904.04 does not specify any limitations to the exception to privilege in cases where the professional has reasonable grounds to suspect child abuse or neglect. A careful definition of this exception to privilege is necessary to protect the legal rights of the client to confidential communication, and to preserve the integrity of the relationship between the client and the professional. While a report of child abuse and neglect is a necessary exception, it should not open the door to access to records outside of the information contained in the report.

Without this change, the potential exists that social workers will be put in direct conflict with their professional Code of Ethics. Our professional code states that only information related to the reason for the exception should be released, and that social workers have an obligation to protect confidential client information, using the legal process if necessary. Privacy and confidentiality issues comprise the longest section under social workers' ethical responsibilities to clients, precisely because they are so critical to effective helping relationships. Protection of the privacy of the client-professional relationship is in the interest of the individual's right to privacy and in the public interest in access to effective helping resources.

The passage of SB 264 will protect client's rights by closing the door on the possibility that all records could be open to legal probing, and specifically designates that the information released must be limited to what is in the report of child abuse or neglect.

Memo



To: Members of the Senate Committee on Health & Human Services

From: Josh Freker, Policy Director, WCADV, 608-255-0539 or joshf@wcadv.org

Date: October 17, 2007

Re: Testimony in support of SB 264

Thank you for providing an opportunity to share my organization's perspective on SB 264. I represent the Wisconsin Coalition Against Domestic Violence, which is the statewide voice for victims of domestic violence and the local programs in every county of our state that serve them. A substantial charge of our organization is to advocate for families and children. I'm here today to offer comments in support of SB 264.

Although the domestic violence movement began with a concerted focus on helping battered women, our focus has rightly expanded to address the needs of children who have witnessed their mothers being abused. The research literature increasingly confirms that these children can suffer potentially long-term consequences including depression, anxiety, sleep disorders, aggressive behaviors, and not being able to keep up with school. In addition, many children may have experienced abuse directly themselves.

Every domestic violence program in the state has programming specifically designed to support these children. Our advocates provide a sense of safety to the children, opportunities to heal from abuse, strategies for stopping the intergenerational transmission of violent behavior, and a place to talk about the children's experiences in the home. They also help direct children to therapists who can counsel them on a more intensive level.

In most cases, children come to a domestic violence program having never spoken to anyone—even their own mother—about the violence in their household. They almost always carry with them a sense that somehow the violence at home is their fault. Mothers also feel a sense of guilt or shame and often have never addressed their abuse directly with their children. This means advocates and therapists are often the first people the children have ever trusted to discuss these extremely sensitive issues.

The *Dennis L.R.* decision has caused a great deal of worry for our local programs who fear the ruling would open up private details of therapists' sessions with kids to the courts or law enforcement, well beyond reporting the fact of abuse itself. If therapists are forced to reveal their full exchanges with the children, it seriously undermines their ability to help children begin to heal from abuse.

We support SB 264 because it will help ensure that the child therapist privilege is narrowly tailored to include the mandatory reporting of child abuse but not force counselors to reveal the entire content of their therapy sessions. It will ensure that direct abuse of children comes to light but therapists and advocates' ability to gain trust and focus on the needs of traumatized children is not compromised.

I strongly urge you to support SB 264.

Thank you for your time and consideration of my remarks.



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The Supreme Court's reading of the statute drastically enlarges its scope beyond what was intended and is necessary. Mental health professionals had always believed the exception existed for the sole purpose of allowing the therapist to share *only* the information contained in their mandated report. Until Denis LR, this is how this statute worked out in practice. This interpretation and practice was consistent with other statutory privilege exceptions, such as the exception in section 905.04(4)(am) that allows the court to access

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